



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GROVER SELLERS
ATTORNEY GENERAL

Honorable Esco Walter
District Attorney
104th Judicial District
Abilene, Texas

Dear Sir:

Opinion No. 0-6743

Re: Whether an operator of any kind of warehouse, public or private, violates any criminal law of this State if he neglects to give the bond referred to in Article 5569 of the Revised Civil States.

Your opinion request of recent date received and quoted as follows:

"It is my opinion that there is no criminal statute in this State prohibiting and making it an offense for a person to operate a warehouse where goods, wares and merchandise are stored for hire. Article 5568, Vernon's Revised Civil Statutes reads in part as follows:

"Any person, firm, company, or corporation who shall receive cotton, wheat, rye, oats, rice, or any kind of produce, wares, merchandise, or any personal property in store for hire, shall be deemed and taken to be public warehousemen."

"Article 5569 provides that 'before the proprietor of any public warehouse shall transact any business as a public warehouseman, he shall file with the County Clerk a bond and receive a certificate authorizing him to act as such. Other statutes prescribe the form of the receipt to be issued by a public warehouseman.'

"Article 5577 reads as follows: 'Nothing in this law shall be construed to apply to private warehouses or to the issue of receipts by their owners or managers under existing laws, or to prohibit public warehousemen from issuing such receipts as are now issued by private warehousemen under existing laws. Such private warehouse receipts issued by public warehousemen shall never be written on a form or blank indicating that it is issued from a public warehouse, but shall, on the contrary, bear on its face, in large characters, the words, "not a public warehouse receipt".'

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"In the case of Kimbell Milling Company vs. Greene, 170 SW (2d) at page 191, the Supreme Court, through Chief Justice James P. Alexander, held in part as follows:

"It is apparent, we think, that it was the intention of the Legislature to merely prohibit the issuance of a public warehouse receipt unless and until the provisions of the statute have been complied with, and that the statute was not intended to prohibit the operation of a private warehouse such as was operated by Boothe Mill and Elevator Company, Inc. The contract, therefore, was not void."

"The question I am interested in having answered by your department is with reference to the question of whether an operator of any kind of warehouse, public or private, violates any criminal law of this State if he neglects to give the bond referred to in Article 5569 of the Revised Civil Statutes."

In answer to your question we are herewith enclosing a copy of Opinion No. O-1645, delivered by the Attorney General of Texas on November 29, 1939, which holds, inter alia, as follows:

"* * * We advise that the statutory law provides no penalty either in the form of a fine or imprisonment for failure to file the bond called for in Articles 5561 and 5569, supra, on the part of any person, firm, or corporation, engaged in the business of a public warehouseman and of storing property for hire. * * *

A careful search of the statutes enacted since the date of said next-above mentioned opinion has convinced us that the hereinabove quoted holding on the question of violations of the criminal law by public warehousemen who fail to

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file said bonds is also correct at this time, whether in respect to a public or a private warehouseman.

Yours very truly

ATTORNEY GENERAL OF TEXAS

By *Robt. L. Lattimore, Jr.*
Robert L. Lattimore, Jr.,
Assistant

APPROVED AUG 22 1945

RLL:zd

W. L. Lattimore
ATTORNEY GENERAL OF TEXAS

